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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE, Plaintiff and Respondent, v. FRANK RUDOLPH ESTRADA, Defendant and Appellant.	C085059 (Super. Ct. No. CRF164730)

Defendant Frank Rudolph Estrada appeals his conviction for recklessly evading police officers and misdemeanor child endangerment. He contends the trial court abused its discretion in admitting his 2004 burglary conviction and in allowing law enforcement officers to testify that he was suspected of child abuse at the time of the evading. We find no prejudicial error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant's 17-year old daughter, A.B. was a cadet in the Yolo County Sheriff's Office Cadet Program. Deputy Forster was in a mentoring relationship with A.B. A.B. called Forster on a school day and reported defendant had taken her out of school; she was upset, crying, and speaking quickly. Forster was concerned about A.B. and was a mandated reporter; she reported the call to law enforcement through dispatch as suspected child abuse, and also contacted Deputy Martin, who knew A.B. from the cadet program.

Deputies Martin and Mez responded to the call; they went to A.B.'s high school and recognized defendant's van as it drove by them just as they arrived at the school. Martin could see three people in the van, one in the driver's seat, one in the passenger seat, and a third sitting on the floorboards of the van. Defendant was driving, a relative was in the passenger seat, and A.B. was on the floor.

Martin and Mez each got in their patrol cars and "tried to catch up"; they followed defendant with emergency lights and sirens activated. Defendant did not yield to the deputies and instead refused to pull over, failing to stop at multiple stop signs, committing other Vehicle Code violations, and nearly hitting a truck. Sergeant Bautista joined the chase responding to a call on the radio that the pursuing officers were dealing with "some sort of child abuse call."

Defendant turned into a parking lot and was contained by law enforcement. Martin found A.B. in the van. She appeared scared and rattled. She had an injury on her cheek, but it did not require medical care. The van only had two seats and seat belts for those two seats. A.B. was not in a seat and did not have a seat belt on or available during the pursuit.

On the way to jail, defendant told Martin he had hit A.B. on her upper thigh with the back of his hand because she had disobeyed him by going to school. He thought the school was a bad influence on A.B. He had not stopped for law enforcement because he

was trying to get to the Woodland Police Department to "report sheriff department's misconduct." He testified he had ongoing problems with law enforcement, particularly the cadet program instructors who he claimed were inappropriately intrusive and had "go[ne] through [his] home" and "question[ed] [his] daughter." He had tried to get to the police rather than stopping for the deputies out of concern for his own safety with the sheriffs.

The People charged defendant with felony evading a peace officer with reckless driving (Veh. Code, § 2800.2 - count 1) and misdemeanor child endangerment (Pen. Code, § 273a, subd. (b) - count 2). A jury found defendant guilty as charged. The trial court suspended imposition of sentence and granted defendant probation conditioned on his serving 208 days in jail (time served) and completing one year of parenting classes.

DISCUSSION

I

Admission of Prior Burglary Conviction for Impeachment

Defendant first contends the trial court abused its discretion in admitting his 2004 burglary conviction to impeach his testimony. He argues the conviction had little relevance because it was remote and he had no subsequent criminal history. (Evid. Code, § 352.)[1] We find no error.

A. *Background*

Defendant filed a boilerplate in limine motion addressing a number of issues; as relevant here, the motion did not mention any specific priors but purported to "set[] forth the governing law that may be applicable depending on the proffered priors, and reserve[] argument as to the particular priors as may be identified by the People." At the beginning of trial, the People advised they intended to offer defendant's 2004 felony burglary

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[1] Undesignated statutory references are to the Evidence Code.

conviction as impeachment evidence if defendant chose to testify, previously disclosed through defendant's rap sheet. Defendant objected, arguing that the conviction was "reducible to a misdemeanor" and "more than 10 years old" but citing no specific code section or case. The trial court ruled the fact of the prior felony conviction would be admissible to impeach defendant if he testified.

Defendant did testify, and the prosecutor asked about the prior on cross examination. Defendant answered he was "not too sure anymore" when asked about the prior's felony status, indicating that he had attempted to have it expunged.

Prior to closing argument, the trial court instructed the jury that it was only permitted to consider the fact of a felony conviction "in evaluating the credibility of the witness's testimony. The fact of a conviction does not necessarily destroy or impair a witness's credibility. It is up to you to decide the weight of that fact and whether that fact makes the witness less believable."

B. *Analysis*

Prior felony convictions are generally admissible to impeach a testifying witness, including the accused.

"No witness including a defendant who elects to testify in his own behalf is entitled to a false aura of veracity." (*People v. Beagle* (1972) 6 Cal.3d 441, 453, superseded by constitutional amendment on other grounds as described in *People v. Rogers* (1985) 173 Cal.App.3d 205, 208-209.) "Any prior felony conviction of any person in any criminal proceeding . . . shall subsequently be used without limitation for purposes of impeachment . . . in any criminal proceeding." (Cal. Const., art. I, § 28, subd. (f)(4).)

Under sections 788 and 352, the trial court retains discretion to disallow impeachment by prior conviction when the probative value of the prior is substantially outweighed by its prejudicial effect. (*People v. Clair* (1992) 2 Cal.4th 629, 654; *People v. Mendoza* (2000) 78 Cal.App.4th 918, 925 (*Mendoza*).) In exercising its

discretion, the court must consider whether the prior conviction reflects adversely on the witness's honesty or veracity, its nearness or remoteness in time, its similarity to the present offense, and the potential effect on the defendant's failure to testify. (*Mendoza*, at p. 925.) The trial court has broad discretion in determining whether to admit or exclude evidence under section 352 and its ruling will not be overturned absent an abuse of discretion. (*People v. Ramos* (1997) 15 Cal.4th 1133, 1170.)

We begin by noting that the lack of a specific objection on section 352 grounds arguably forfeits defendant's claim. As we have noted, defendant filed only a boilerplate pretrial motion that did not mention, much less analyze, the 2004 conviction now at issue. During the (short) discussion in the trial court, counsel never mentioned section 352 or the balance between probative and prejudicial evidence, commenting only that the conviction was "reduceable" and over 10 years old. However, because remoteness is one of the factors to be considered in a proper section 352 analysis and because the Attorney General does not argue forfeiture, we shall reach the merits of the claim.

Evidence of a burglary conviction may be admissible as impeachment evidence because it is a crime of moral turpitude and an act of dishonesty. (*People v. Collins* (1986) 42 Cal.3d 378, 395.) As such, "California courts have repeatedly held that prior convictions for burglary . . . are probative on the issue of the defendant's credibility." (*Mendoza*, *supra*, 78 Cal.App.4th at p. 925.) Thus, the first factor to be considered, the prior's bearing on credibility, is in favor of its admission.

Defendant sustained the burglary conviction in August 2004, some 13 years before he testified. The record before the trial court did not include any information regarding any subsequent criminal history. Relying on information contained in the probation report, the Attorney General argues defendant did not lead a legally blameless life between 2004 and 2016. But this evidence was not before the trial court at the time it made its decision to admit the prior conviction, and therefore is not properly part of our analysis. There is no bright-line time limitation on the use of prior convictions and

defendant cites no authority holding 13 years is too long ago to be relevant. While a prior conviction arguably becomes *less probative* as its remoteness increases, crimes that are remote in time are not automatically inadmissible for impeachment purposes. (*Mendoza, supra,* 78 Cal.App.4th at pp. 925-926.) The admission of a 13-year-old felony prior conviction is not in and of itself unreasonable. (See, e.g., *People v. Johnson* (1987) 193 Cal.App.3d 1570, 1574-1578 [10-year-old conviction not too remote]; *People v. DeCosse* (1986) 183 Cal.App.3d 404, 411-412 [12-year-old conviction not too remote].) Even assuming the analysis on this factor was lacking, as we explain immediately below, the other three factors were solidly in favor of the prior's admission.

The similarity factor weighs in favor of admission. Burglary is not at all similar to evading police and child endangerment. Thus, there was little to no risk of the jury treating the prior conviction as propensity evidence rather than using it solely to assess defendant's credibility. (See *People v. Beagle, supra,* 6 Cal.3d at p. 453; See also *People v. Muldrow* (1988) 202 Cal.App.3d 636, 646.)

As to the last factor, any potential adverse impact on defendant's decision to testify, it has no application here. Defendant did, in fact, testify. Thus, two of the four factors were clearly in favor of the prior's admission, one factor does not apply, and the fourth factor, remoteness, was the weakest. Even assuming the analysis of the prior's age weighed in favor of defendant, the decision to admit the prior as impeachment evidence was not an abuse of discretion.

II

Admission of Deputies' Testimony of Suspected Child Abuse

Defendant next contends the trial court erred in allowing the deputies to testify as to the reason they were investigating defendant--allegations of child abuse. He argues this testimony should have been excluded under section 352 because there was no need for the jury to know the deputies' motivation for the pursuit and given the similarity of

the abuse claim to the charged offense (child endangerment), the jury was more likely to find him guilty after hearing about the abuse claim.

A. *Background*

Prior to trial, defense counsel objected under section 352 to the transcription and audio portion of the recordings taken by the dashboard cameras during the pursuit wherein felony child endangerment (as opposed to felony child abuse, the claim under investigation, or misdemeanor child endangerment, the charged offense) was mentioned. The prosecution argued the references gave context as to why the officers were trying to contact defendant. The trial court ruled the references on the audio recordings were inadmissible, noting that the evidence would "paint[] a picture to the jury that the defendant committed child endangerment. [¶] So, I mean, you don't need this misleading audiotape to get that fact in. I mean you can -- I would permit it, an officer to say, we had -- we had belief there was child endangerment, . . . if they had a good faith belief to do that, I would not let it in for the truth of the matter, but to call it a felony, child endangerment is, well, maybe they believe it was, in which case their whole network of information is unreliable because it was -- that was an unreliable statement, and so I'm not going to allow the jury to be told that there was a suspicion of felony, child endangerment, even if they believe that they don't need to be told that. [¶] That's why we limit unreliable or prejudicial evidence. So, under 352, I will not allow reference to felony, child endangerment." This ruling applied to both dashboard camera recordings of the pursuit.

During trial, Forster began testifying about the phone call from A.B. Defense counsel objected on hearsay grounds and the trial court instructed the jury it could consider the statement not for the truth of the matter, but only to explain what Forster did next. Forster then testified she felt compelled to call dispatch about A.B.'s call because she is a mandated child abuse reporter. Defense counsel objected to Forster's testimony as speculative. The court overruled the objection. Martin testified he was dispatched to

A.B.'s high school to investigate child abuse allegations. Defense counsel did not object to this testimony. Bautista testified he heard over the radio that officers were pursuing a vehicle related to a child abuse call. Based on an earlier hearsay objection by defense counsel, the court admonished the jury it was not to consider that testimony for the truth of the matter.

Outside the presence of the jury, defense counsel sought a limiting instruction as to the purpose for which the jury could consider the earlier child abuse allegations. The trial court instructed the jury, "You've heard some testimony that has not been admitted for the truth of the matter. Specifically, referring to things that were heard over the dispatch radio or told to officers, which were not admitted for the truth of the matter, because it is considered hearsay. [¶] So, for example, if I admitted something to allow you to understand why an officer did as he did, it does not mean that what he heard is true. For instance, there were, I think, a couple of references to officers hearing reports that there was child abuse, that evidence is not being admitted to prove that there was or was not child abuse, and it cannot be considered in determining whether or not child abuse occurred." The court reminded the jury again at the close of evidence that certain evidence was admitted for a limited purpose and could only be considered for that purpose.

B. *Analysis*

As we have set forth, at no point did defendant raise an objection under section 352 as to the propriety of the admission of the deputies' *trial testimony* regarding their understanding that they were pursuing defendant in relation to a child abuse investigation, felony or otherwise. Despite the trial court's announcement when ruling on the motion to exclude the dashboard camera audio that it *would* permit the deputies to *testify* as to their "belief that there was child endangerment" (but not permit the audio recordings to be played), defendant voiced no objection. At the time of the testimony at

issue, defendant objected only to hearsay and speculation, but did not raise a section 352 objection. Thus, he has forfeited this contention.

"Evidence Code section 353, subdivision (a) allows a judgment to be reversed because of erroneous admission of evidence only if an objection to the evidence or a motion to strike it was 'timely made and so stated as to make clear the specific ground of the objection.' Pursuant to this statute, ' "we have consistently held that the 'defendant's failure to make a timely and specific objection' on the ground asserted on appeal makes that ground not cognizable." ' [Citation.]" (*People v. Demetrulias* (2006) 39 Cal.4th 1, 20-21.) Failure to base a timely and specific objection to evidence on section 352 grounds forfeits consideration on appeal of that ground for exclusion. (*People v. Williams* (1997) 16 Cal.4th 153, 206.)

" '[T]he objection must be made in such a way as to alert the trial court to the . . . basis on which exclusion is sought, and to afford the People an opportunity to establish its admissibility.' [Citation.] What is important is that the objection fairly inform the trial court, as well as the party offering the evidence, of the specific reason or reasons the objecting party believes the evidence should be excluded, so the party offering the evidence can respond appropriately and the court can make a fully informed ruling. If the court overrules the objection, the objecting party may argue on appeal that the evidence should have been excluded for the reason asserted at trial, but it may not argue on appeal that the court should have excluded the evidence for a reason different from the one stated at trial. A party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct." (*People v. Partida* (2005) 37 Cal.4th 428, 435.) "The requirement of a specific objection under section 353 applies to claims seeking exclusion under section 352." (*People v. Holford* (2012) 203 Cal.App.4th 155, 169.) Without a specific objection, the trial court is not "fully apprised of the basis on which exclusion is sought; nor can the trial court conduct a balancing analysis . . . ." (*Id.* at p. 170.)

Defendant's failure to raise a specific objection to the deputies' testimony gave the court no opportunity to consider or correct the error he raises here. His (successful) section 352 objection to the dashboard camera audio was insufficient to preserve a section 352 claim regarding the deputies' testimony, admitted for the limited purpose of explaining their actions in investigating and detaining defendant. Accordingly, the claim is forfeited.[2]

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

I concur:

/s/
Butz, Acting P. J.

[2] Because we have found no error to cumulate, we do not address defendant's final claim of cumulative error.

Mauro, J., Concurring.

I fully concur in the disposition. I write separately merely to note my understanding that the trial court excluded reference to felony child endangerment.

In Part II, the majority opinion indicates the trial court ruled that pursuant to Evidence Code section 352, it would "not allow reference to felony, child endangerment." (Maj. opn. *ante*, at p. 7.) Nevertheless, in its subsequent analysis, the majority opinion says the trial court announced it would permit the deputies to testify as to their belief that there was child endangerment. (Maj. opn. *ante*, at p. 8.) I do not read the record that way. Although the trial court's comments meander somewhat, I believe it ultimately ruled it would not allow reference to felony child endangerment.

_____/s/_____
Mauro, J.